

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOSEPH CARLINO,

Plaintiff,

vs.

WASHINGTON MUTUAL, and
DIEDRA BENTLEY

Defendants.

CASE NO. 08-CV-1084-H

ORDER:

(1) DENYING MOTION TO
PROCEED IN FORMA
PAUPERIS WITHOUT
PREJUDICE

(2) DENYING MOTION FOR
APPOINTMENT OF COUNSEL
WITHOUT PREJUDICE

On June 19, 2008, plaintiff Joseph Carlino ("Plaintiff") filed case this case against Washington Mutual and Diedra Bentley. The complaint alleges that the defendants conspired to illegally garnish Plaintiff's social security disability award. (Doc. No. 1.) The Court transferred the case to Judge Huff under the local "Low Number" rule based on related case 08-CV-1084. See Local Civil Rule 40.1. The Court dismissed that case for failure to state a claim, with leave to amend, on June 11, 2008, and Plaintiff did not file an amended complaint within the 45 day period provided by the Court. (See 08-CV-0995, Doc. No. 4.) In this case, Plaintiff has filed motions to proceed in forma pauperis ("IFP") and for appointment of counsel. (Doc. Nos. 2-3.)

Discussion

I. Motion to Proceed IFP

At this time, it is unclear to the Court whether Plaintiff is able to pay the filing fee. The motion indicates that Plaintiff receives \$1,567 per month from social security disability and medicare. It also indicates that he pays \$320 per month in alimony. Though not stated in his motion to proceed IFP, his motion for appointment of counsel indicates a monthly housing payment of \$385. Beyond that, Plaintiff does not provide detail about other recurring obligations, such as the monthly payment on any debts owed. Plaintiff indicates that he has no automobile or other significant assets, other than small account balances with Washington Mutual and Wells Fargo.

Based on this information, Plaintiff may be able to pay the fee. Since Plaintiff has not affirmatively demonstrated an inability to pay, the Court denies the motion without prejudice. Plaintiff may submit a new motion with more detailed financial information, especially regarding any other monthly obligations.

II. Motion for Appointment of Counsel

Based on the filings so far, the Court is satisfied that Plaintiff has a sufficient grasp of the issues and is able to represent himself. Accordingly, the Court denies the pending motion for appointment of counsel without prejudice.

Conclusion

The Court DENIES the motions to proceed IFP and for appointment of counsel, without prejudice.

IT IS SO ORDERED.

DATED: August 13, 2008


MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT

COPIES TO:
All parties of record.